

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<b>State of West Virginia, et al.,</b>	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 15-1363
	)	(and consolidated cases)
<b>United States Environmental Protection Agency, et al.,</b>	)	
	)	
Respondents.	)	
	)	

**DECLARATION OF DALLAS WINSLOW,  
CHAIRMAN OF DELAWARE PUBLIC SERVICE COMMISSION**

I, Dallas Winslow, hereby declare:

1. I am the current Chairman of the Delaware Public Service Commission (the “Commission”). I was first appointed to the Commission in 2005 and have served as Chairman since 2012. For 30 years, I served the State of Delaware in the Office of the Public Defender, including as Chief of Legal Services, and I remain engaged in the private practice of law in Wilmington. I am also a retired Colonel from the Delaware National Guard. I also served in the Delaware State Senate from 1998 to 2002 as a member of the Republican Caucus from the 4th Senatorial District.

While there, I served on the Senate Energy and Transit Committee, Judiciary Committee, Highways and Transportation Committee, and the Joint Finance Committee.

2. In my role at the Commission, my responsibilities include working to ensure safe, reliable and reasonably priced electric, natural gas, water and wastewater services for Delaware customers. The Commission also has limited regulatory authority over telephone and cable television rates and services.

3. As part of my responsibilities at the Commission, I currently serve as a member of the Board of Directors of the Regional Greenhouse Gas Initiative, Inc., the entity that assists states with the implementation of the Regional Greenhouse Gas Initiative (“RGGI”).

4. The purpose of this Declaration is to provide my understanding, on behalf of the Commission, of the Commission’s readiness to work with other state agencies and stakeholders to assist with state planning under the United States Environmental Protection Agency’s (“EPA”) final rules regarding greenhouse gas emissions from existing power plants under Section 111(d) of the Clean Air Act (the “Clean Power Plan”). This Declaration is also intended to provide my

understanding of the state’s successful participation in RGGI and my expectation based on that experience that Delaware is well positioned to achieve the Clean Power Plan emission reduction goals for the state.

5. On December 3, 2015, the Commission voted by a vote of [REDACTED] to authorize me to sign this Declaration.

#### *Delaware Public Service Commission*

6. Created in 1949 to regulate investor-owned public utilities, the Delaware Public Service Commission has “exclusive original supervision and regulation of all public utilities and also over their rates, property rights, equipment, facilities, service territories and franchises,” including “the regulation of the rates, terms and conditions ... and, in so regulating, the Commission shall consider the interests of subscribers, if any, ... as well as the interests of the consumer of the public utility service.”<sup>1</sup> The Commission is made up of five part-time Commissioners, appointed by the Governor and confirmed by the State Senate. The Commissioners are supported and assisted by a staff of full-time state employees. The Commission makes its decisions at formal meetings that are open to the public.

---

<sup>1</sup> 26 *Del. C.* § 201(a).

*Commission Activities to Address Climate Change and Advance Renewable Energy*

7. With respect to climate change and greenhouse gas emissions, the Delaware General Assembly has found that:

Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally, regionally and in the State...

It is in the interest of the State to protect human health and terrestrial and aquatic ecosystems by taking actions to stabilize and to limit the CO<sub>2</sub> [carbon dioxide] contributions from the State...

A CO<sub>2</sub> reduction program focusing on fossil fuel-fired electricity generation, and the development of a CO<sub>2</sub> allowance trading program, will create a strong incentive for the creation and deployment of more efficient fuel-burning technologies, renewable resources and end-use efficiency resources, which will lead to lower dependence on imported fossil fuels.<sup>2</sup>

8. The Commission, along with other Delaware agencies and stakeholders, has devoted considerable attention to the challenge of mitigating the impacts of climate change through reducing emissions and advancing renewable energy sources.

9. The Commission also has played a significant role in the implementation of RGGI. For example, the Delaware General Assembly authorized my ongoing

---

<sup>2</sup> 7 Del. C. § 6043.

participation in RGGI, as the Chair of the Public Service Commission, to represent Delaware's interests to implement and participate in RGGI.

10. In July 2005, the Delaware General Assembly enacted the Renewable Energy Portfolio Standards Act.<sup>3</sup> The General Assembly stated that the purpose of the Renewable Energy Portfolio Standards Act was to establish a market for electricity from renewable resources in Delaware and to lower the cost to consumers of electricity from these resources. The Public Service Commission was charged with assuring compliance with the Renewable Energy Portfolio Standards ("RPS") and establishing regulations. The Public Service Commission promulgated "Rules and Procedures to Implement the Renewable Energy Portfolio Standard" ("RPS Rules") in 2006 and has revised the RPS Rules from time to time.<sup>4</sup>

11. In August 2014, legislation enabling Delaware electric and gas utilities to provide cost-effective energy efficiency programs to their customers and to help Delaware meet the requirements of the Energy Efficiency Resource Standard was

---

<sup>3</sup> See 26 Del. C. § 351 *et seq.*

<sup>4</sup> See 26 Del. Admin. C. § 3008.

enacted.<sup>5</sup> This legislation created the Energy Efficiency Advisory Council (EEAC). The EEAC, in collaboration with the Public Service Commission Staff and the Public Advocate, will recommend energy efficiency, peak demand reduction, and emission-reducing fuel switching programs. Local jobs will be created by driving investments in energy efficiency that displace more expensive energy supply purchases.

### *RGGI Experience*

12. Delaware's experience with RGGI has prepared the state to comply with the Clean Power Plan. Delaware has implemented RGGI,<sup>6</sup> which limits the carbon emissions of fossil fuel-fired power plants in the RGGI states, including in Delaware. In December 2005, the Governor of Delaware along with the Governors of Connecticut, Maine, New Hampshire, New Jersey, New York and Vermont, signed a Memorandum of Understanding that explained the overall goal of RGGI.<sup>7</sup> RGGI creates a cap-and-trade program aimed at reducing emissions in participating states, while maintaining economic growth and maintaining a safe and reliable electric power system. RGGI is the nation's first mandatory

---

<sup>5</sup> 79 Del. Laws ch. 395.

<sup>6</sup> See 7 Del. Admin. C. § 1147 (Dec. 11, 2008).

<sup>7</sup> Maryland and Massachusetts joined RGGI before it was implemented in 2009. New Jersey withdrew from RGGI at the end of 2011.

greenhouse gas pollution program for carbon dioxide (CO<sub>2</sub>) emissions. RGGI is composed of individual CO<sub>2</sub> budget trading programs in each state. Delaware has invested the majority of its CO<sub>2</sub> allowance proceeds in energy efficiency and renewable energy programs.

13. After a comprehensive 2012 Program Review, the nine RGGI states implemented a new RGGI cap of 91 million short tons of CO<sub>2</sub>, which will decline 2.5 percent each year from 2015 to 2020.

14. RGGI has been a successful program in Delaware. Auction proceeds are invested in clean energy and energy efficiency programs that benefit the state's customers and help reduce emissions. According to a recent analysis by the Analysis Group for RGGI, Inc., between 2012 and 2014, RGGI created almost 1,000 jobs in Delaware and generated more than \$100 million in economic activity in the state.

#### *Clean Power Plan*

15. Working with Commission Staff and representatives of other states participating in RGGI, I have followed EPA's development of the Clean Power Plan.

16. I have reviewed the final Clean Power Plan regulations. The regulations establish CO<sub>2</sub> emission performance rates for electric generating units, including power plants in Delaware. The regulations also define guidelines for states to use in preparing state plans to achieve state-specific emission reduction goals. The regulations provide flexibility for states to select from among a number of potential state plan types, including mass-based trading programs like RGGI.

17. As part of the required periodic review of the RGGI program, the RGGI States, including Delaware, are currently working together with the intent of developing state plans under the Clean Power Plan that utilize the structure of the RGGI program. The RGGI States are currently soliciting stakeholder input on Clean Power Plan compliance. The Commission is participating in some of these stakeholder activities, along with the Delaware Department of Natural Resources and Environmental Control (DNREC). DNREC held an informal listening session on the Clean Power Plan to hear public comments on November 10, 2015 and is accepting comments on Delaware's compliance with the Clean Power Plan through December 31, 2015.



18. I understand that the Clean Power Plan regulations require that states provide an initial submission with an extension request or final plan to EPA by September 6, 2016, with a final plan due by September 6, 2018, if a state was granted an extension in 2016. Based on Delaware's experience implementing the RGGI program, I am confident that Delaware will be able to comply with the state planning requirements of the Clean Power Plan in a timely fashion.

19. The state legislation implementing RGGI contemplates that the state "may transition" to a federal program equivalent to RGGI and authorizes the state to amend its RGGI regulations to transition to the federal program.<sup>8</sup>

20. Based on Delaware's experience with RGGI, the Commission does not anticipate that the Clean Power Plan will adversely affect electric reliability:

- a. Delaware power plants that are subject to RGGI participate in the PJM wholesale electric market and are able to include CO<sub>2</sub> allowance costs in the bids they make when they offer their generation for economic dispatch, much as they can include other environmental compliance and variable costs in their bids. Assuming that Delaware

---

<sup>8</sup> 7 *Del. C.* § 6047.

adopts a mass-based state plan, it is likely that this practice will continue without any disruption to the PJM wholesale electric markets.

- b. Implementing RGGI has not adversely affected electric reliability in Delaware in any way. Based on this experience, the Commission is confident that the Clean Power Plan will not adversely affect electric reliability in the state.
- c. Various studies of the RGGI program have shown that it has modestly decreased electric bills for customers by increasing deployment of cost effective energy efficiency measures, which help lower overall electric demand and costs.
- d. Based on my understanding of Delaware's Clean Power Plan goals and the affected electric generating units in the state, Delaware is on track to meet its Clean Power Plan interim and final compliance goals.

21. The Commission and its Staff regularly and routinely work with DNREC to understand and help implement federal environmental requirements, including regulations promulgated by EPA under the Clean Air Act. Commission Staff participates on certain RGGI committees and is a participant in meetings for Executive Order 41: Preparing Delaware for Emerging Climate Impacts and

Seizing Economic Opportunities from Reducing Emissions, which was issued September 12, 2013.<sup>9</sup> Executive Order 41 directs state agencies to address both the causes and consequences of climate change in a coordinated and cost-effective manner by developing recommendations. The Commission fully expects this kind of collaboration as Delaware prepares its state plan under the Clean Power Plan.

22. A stay of the Clean Power Plan will complicate the Commission's energy planning because it could significantly postpone the integration of the state's planning work under the Clean Power Plan with other state energy and climate planning efforts while a stay is pending.

I declare under penalty of perjury that the foregoing is true and correct.

*Approved by a Commission vote of [INSERT RESULTS OF VOTE].*

Executed on December 3, 2015.

---

Dallas Winslow  
Chairman  
Delaware Public Service Commission

---

<sup>9</sup> Available at <http://governor.delaware.gov/orders/EO041.pdf>.